

No. 82-1218

Office - Supreme Court, U.S.
FILED

FEB 14 1983

ALEXANDER STEVAS
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

FLOWERS INDUSTRIES, INC., JERRY KRALIS,
and KRALIS BROS. FOODS, INC.,
Petitioners,

v.

PETE HARDING BROWN AND MOTT'S, INC.
OF MISSISSIPPI,
Respondents.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

CLIFF FINCH
(Counsel of Record)
P.O. Drawer 568
Batesville, MS 38606
601/563-7646

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
STATEMENT OF THE CASE.....	1
REASONS WHY THE WRIT SHOULD BE DENIED..	4
CONCLUSION	5

TABLE OF AUTHORITIES

CASES

United States Labor Party v. Oremus, 619 F.2d 683 (7th Cir. 1980)	4
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)	3, 4

STATUTES

15 U.S.C. § 1	2
MISS. CODE ANN. § 13-3-57 (1972)	2

RULES

Fed. R. Civ. P. 59(e)	3, 4
-----------------------------	------

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1218

FLOWERS INDUSTRIES, INC., JERRY KRALIS,
and KRALIS BROS. FOODS, INC.,
Petitioners,

v.

PETE HARDING BROWN AND MOTT'S, INC.
OF MISSISSIPPI,
Respondents.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Pete Harding Brown and Mott's, Inc. of Mississippi, respectfully request that this Court deny the petition for the writ of certiorari, seeking review of the decisions of the Court of Appeals for the Fifth Circuit to hear the appeal and to reverse and remand this case. The opinion is reported at 688 F.2d 328.

STATEMENT OF THE CASE

Respondents, Pete Harding Brown and Mott's, Inc. of Mississippi, filed a Complaint against Flowers Industries, Inc., Kralis Bros. Foods, Inc., and Jerry Kralis on December 15, 1980, in the United States District Court for the Northern District of Mississippi. The respondents sought damages for the tortious conduct of the petitioners in

conspiring together to and in causing economic injury to respondents by making false and defamatory statements to the U.S. Attorney in Oxford, Mississippi,¹ by maliciously interfering with respondents' business relationships, by causing a Four Million Dollar loan to respondents from the United States Farmers Home Administration to be stopped, and by violating the Sherman Act, 15 U.S.C. § 1, et. seq.

Service of process was made pursuant to the Mississippi long-arm statute—MISS. CODE ANN. § 13-3-57 (1972). The petitioners answered and moved for dismissal for lack of in personam jurisdiction.

¹ Contrary to petitioners' representation that the record does not contradict their assertion that Mr. Kralis only made lawful inquiry of the U.S. Attorney (p. 4 of Petition), the following recount of Mr. Kralis' slander is set forth in the Complaint and is uncontradicted by any of petitioners' affidavits:

The Defendant, Kralis, . . . made the following statement to the U.S. Attorney's Office at Oxford, Mississippi:

'That the Plaintiffs, PETE HARDING BROWN and MOTT'S INC. OF MISSISSIPPI, selected as consultants, Jack Frost and Company, Certified Public Accountants of Little Rock, Arkansas, which said CPA firm is the CPA for Lane Poultry, and that Lane Poultry was a major supplier of the Plaintiffs, PETE HARDING BROWN AND MOTT'S INC. OF MISSISSIPPI, and was, therefore, unable to make an impartial study of the economic impact of the loan.'

The Defendant, Kralis, further stated and published that the loan application made by the Plaintiffs, PETE HARDING BROWN and MOTTS' INC. OF MISSISSIPPI.

' . . . is false because Lane Processing, G.W. Nichols, and Valmac, were listed as competitors of Mott, Inc. of Mississippi when in fact they are creditors of Brown and Mott Inc. of Mississippi.'

The Defendant, Kralis, also stated and published that: ' . . . it was common knowledge in the industry that Brown was being investigated for selling bad chickens to Saudi Arabia under false pretenses, which was bad for the industry.'

That all of the statements listed above are false and untrue . . .

Affidavits in support of the motion to dismiss were filed by petitioners.² Affidavits in response to the motion were filed by respondents. The District Court issued its Memorandum Order dismissing this cause without prejudice for lack of in personam jurisdiction on July 27, 1981. This order was entered on July 29, 1981.

On August 5, 1981, respondents filed and served a Rule 59(e) Motion to vacate the order of dismissal on the following multiple grounds: (1) on the ground of newly discovered evidence showing additional contacts by the [petitioners] with the State of Mississippi; (2) on the ground that [petitioners'] affidavits had contained misrepresentations; (3) on the ground that the dismissal had been procured by the misconduct of a party; (4) and on the ground that the District Court had made an error of law in construing the effect of *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Respondents also filed affidavits in support of the motion. Petitioners responded and filed affidavits. Respondents filed additional affidavits. The District Court issued its Order denying respondents' motion on October 19, 1981. This order was entered on October 21, 1981. The notice of appeal was filed on October 23, 1981, two days after entry of the order.

Petitioners moved to docket and dismiss the appeal, arguing that the Rule 59(e) motion was a nullity and hence did not terminate the running of time for filing the notice of appeal. The Court of Appeals summarily dismissed petitioner's motion.

Concluding that respondents had carried their burden of establishing jurisdiction by alleging in their complaint and affidavits facts to support injury to them in Missis-

² Petitioners' affidavits on the question of commission of a tort in whole or in part in Mississippi specifically state only that they did not "enter the State of Mississippi and there do any of the things charged"

issippi caused by petitioners' intentional tort, the Court of Appeals reversed and remanded the case.

REASONS WHY THE WRIT SHOULD BE DENIED

Since this case involves only two real questions, both of which were decided by the Court of Appeals in accordance with settled law, clearly established by this Court and consistent with all other circuits, the writ should be denied.

The first question is whether a Rule 59(e) motion timely filed and alleging numerous grounds with supporting affidavits stops the running of time for appeal. The answer is clearly yes. *See, United States Labor Party v. Oremus*, 619 F.2d 683, 687 (7th Cir. 1980) (Note that this is the same circuit which decided the *Fine* case erroneously relied upon by petitioners at page 18 of Petition.)

The second question is whether personal jurisdiction may be asserted over alleged tort feasons who have intentionally caused tortious injury in the forum state. The answer is clearly yes. When a tort feason does an act for the purpose of causing injury in the forum state, the foreseeability critical to due process is certainly established. This Court has made clear that "the foreseeability that is critical to due process . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into Court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). One who intentionally causes injury in Mississippi should, of course, reasonably anticipate being haled into court there. Therefore, the Court of Appeals correctly concluded that the petitioners' intentional tort causing injury in Mississippi satisfied this Court's foreseeability requirement.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

CLIFF FINCH
(Counsel of Record)
P.O. Drawer 568
Batesville, MS 38606
601/563-7646